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Attorneys for Defendant Washington Mutual Bank

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

DEWONE WESTERFIELD, CHARLOTTE
MACHADO, PATRICIA KEMESIES, SAMUEL
SANCHEZ, and STEPHEN CAGNACCI on behalf
of themselves and classes of those similarly situated,

Plaintiffs

- against -

WASHINGTON MUTUAL BANK,

Defendant.

Civ. No. 06-CV-2817 (CBA)(JMA)

**DEFENDANT WASHINGTON MUTUAL BANK'S NOTICE OF MOTION AND
CROSS-MOTION TO STRIKE OPT-IN FORMS**

PLEASE TAKE NOTICE that pursuant to the authorities cited in the accompanying
Memorandum of Law in Response to Plaintiffs' Motion for Conditional Certification as an

FLSA Collective Action and for Court-Authorized Notice Pursuant to Section 216(b) of the FLSA, and in Support of Cross-Motion to Strike Opt-Ins, Defendant WASHINGTON MUTUAL BANK, formerly known as Washington Mutual Bank, FA (“WMB”), will move this Court before the Honorable Carol B. Amon, United States District Judge, on a date and time to be designated by the Court, at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 12201, for an Order granting Defendant’s Cross-Motion to Strike Opt-ins submitted by Plaintiffs Dewone Westerfield, Charlotte Machado, Patricia Kemesies, Samuel Sanchez, and Stephen Cagnacci (collectively, “Plaintiffs”).

MOTION

As set forth in WMB’s memorandum of law, Plaintiffs’ counsel have engaged in an extensive nationwide solicitation and notice campaign, without Court authorization. These unilateral solicitation efforts are directly contrary to the mechanisms established under Section 216(b) of the FLSA, and *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165 (1989). As numerous other courts facing similar facts have done, this Court should strike those consent forms that were improperly obtained through Plaintiffs’ unauthorized notice and solicitation efforts. *See Chemi v. Champion Mortgage*, No. 05-CV-1238 (WHW), slip op. at 18 (D.N.J. June 21, 2006) (“the recognition of opt-in plaintiffs who have been retained through means of notice that this Court has already explicitly rejected cannot be accepted.”); *see also Melendez Cintron v. Hershey P.R.*, 363 F. Supp. 2d 10, 17 (D.P.R. 2005) (striking Plaintiffs’ opt-in forms obtained without court approval because “the trial court must first authorize whether the alleged class should be provided with notice”); *Partlow v. Jewish Orphans Home of S. Cal.*, 645 F.2d 757, 758 (9th Cir. 1981), abrogated on other grounds by *Hoffman La-Roche*, 493 U.S. 165 (1989) (striking

69 consent forms where Plaintiffs' counsel, without court authorization, solicited putative class members with communications that were "clearly contrary to law").

Accordingly, WMB respectfully requests that the Court strike the opt-ins filed in this case, and direct Plaintiffs to proceed with their individual claims only.

Dated this 16th day of October, 2006.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: _____

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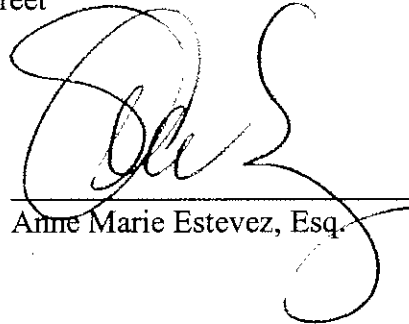
AFFIRMATION OF SERVICE

I HEREBY AFFIRM that I caused to be served upon counsel listed below a true and correct copy of Defendant's Notice of Motion and Cross-Motion to Strike Opt-Ins, via electronic and overnight mail, on this 20th day of October 2006:

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Attorneys for Plaintiffs



A handwritten signature in black ink, appearing to read 'Anne Marie Estevez', is written over a horizontal line. The signature is stylized with large, flowing loops.

Anne Marie Estevez, Esq.